IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12876 of 2003

with

SPECIAL CIVIL APPLICATION No 12869 of 2003

with

SPECIAL CIVIL APPLICATION No 13314 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOLLY ELECTRICAL INDUSTRIES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12876 of 2003

MR KAMAL TRIVEDI, SR. ADVOCATE with MR PARESH M DAVE for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 02/12/2003

ORAL JUDGEMENT
(Per : HON'BLE MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Shri D.N. Patel, Sr. Central Government Standing Counsel in all the three petitions, for the respondents. As the issues involved in all the three petitions are similar, at the request of the learned advocates, all the petitions are finally heard and decided together.

2. The petitioners have challenged the validity of a common order dated 28.3.2003 and the consequential order dated 4.6.2003 passed by the CEGAT.

3. We have heard Sr. Advocate Shri Kamal Trivedi appearing for the petitioners, who has submitted that the impugned order passed by the CEGAT dated 28.3.2003 is bad in law for the reason that, while passing the said order, the Tribunal did not consider two relevant facts, namely, a report submitted by the Addl. Commissioner (Prev.), Central Excise and Customs, Vadodara-II and the financial condition of the petitioner firm.

4. It has been mainly submitted by the Sr. Advocate that while deciding the issue with regard to grant of stay or directing the petitioners to pre-deposit any amount, the CEGAT ought to have considered the report submitted by the Addl. Commissioner (Prev.), Central Excise and Customs, Vadodara-II and also the financial position of the petitioner firm. It has been specifically submitted by him that looking to the report referred to hereinabove, the petitioners had purchased certain components in order to complete the process of manufacturing plain paper copiers.

5. It has been submitted by the Sr. Advocate, that looking to the law laid down by the Hon'ble Supreme Court and other benches of the CEGAT, the CEGAT, New Delhi, should have also looked at the financial condition of the

petitioners. By not considering the financial condition of the petitioners, the CEGAT has erred in law and, therefore, the impugned order is bad in law.

6. On the other hand, Shri D.N. Patel, Sr. Central Govt. Standing Counsel has submitted that there was no order with regard to making inquiry or asking the Addl. Commissioner (Prev.), Central Excise and Customs, Vadodara-II, to make any inquiry or to submit any report and, therefore, it was not at all necessary for the CEGAT to look into the report submitted by the said officer on 8.1.2003. It has been also submitted by him that the Tribunal had considered the financial hardships of the petitioners and, therefore, the impugned order is just, legal and proper.

7. Upon hearing the learned advocates and upon perusal of the impugned order, we find that the CEGAT had definitely not considered the report referred to hereinabove. Even it appears that the question with regard to financial hardship had not been duly considered by the CEGAT while passing the impugned orders.

8. Looking to the peculiar facts and circumstances of the case and the contents of the report referred to hereinabove, we feel that the CEGAT should have considered the said report especially when it appears that the said report had been submitted in pursuance of some oral instructions given by the CEGAT.

9. Looking to the aforestated facts and the circumstances of the case, in our opinion, justice would be done to both the parties, if the petitioners are directed to deposit a sum of Rs. 10 lakhs with respondent No. 3 within four weeks from today and a report of compliance thereof shall be submitted to the CESTAT. The CESTAT shall hear the appeals as soon as possible and preferably within 12 weeks from the date of submission of the report of compliance. The direction with regard to pre-deposit of Rs. 50 lacs is quashed and set aside in view of the above direction given to the petitioners.

10. We are sure that while deciding the appeals, the CEGAT shall look into the relevant record including the report submitted by the Addl. Commissioner (Prev.), Central Excise and Customs, Vadodara-II.

In view of the above order, the petitions stand disposed of as partly allowed. Rule is made absolute to the above extent in each of the petitions. D.S.

permitted.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)